CJ POLYMERS SDN BHD v. SIM CHIN HU & ORS AND OTHER APPEALS

COURT OF APPEAL, PUTRAJAYA
RAVINTHRAN PARAMAGURU JCA
MOHD NAZLAN GHAZALI JCA
CHOO KAH SING JCA
[CIVIL APPEAL NOS: W-02(NCC)(A)-2146-11-2022; W-02(NCC)(A)-2148-11-2022 & W-02(IM)(NCC)-1631-09-2024]
5 MAY 2025

Abstract – *A quasi-partnership exists between founding shareholders who operate a company on a basis of mutual trust, confidence, and informality, regardless of their formal roles. In such a partnership, a shareholder has a legitimate expectation to participate in the company's management. The removal of such a shareholder from management, when it results in them being locked into the company without the possibility of deriving any benefits, constitutes oppressive conduct pursuant to s. 346 of the Companies Act 2016. In such situation, a court may order a buyout of the oppressed shareholder's stake at a fair value, without a minority discount, with the buyout typically carried out by the remaining shareholders rather than the company.*

COMPANY LAW: *Oppression – Minority – Oppression on minority – Founding partner completely excluded from management of company and voted out as director – Employment terminated and founding partner did not receive director fees or salary – Exclusion from associated perks – Shares remained locked in company without any possibility of deriving any benefits with no offer to buy out his shares – Whether there was oppression – Companies Act 2016, s. 346*

PARTNERSHIP: *Existence of partnership – Quasi-partnership – Minority oppression action – Company incorporated with paid-up capital with equal contribution of partners – Arrangement between partners to operate business as equal partners and both involved in management and share responsibilities and benefits equally – Partner terminated from management – Whether there was quasi-partnership – Whether quasi-partnership ceased to exist when another individual became shareholder or when one-third stake bought – Whether removal of partner from management oppressive*

CJ Polymers Sdn Bhd ('CJP') was incorporated with a paid-up capital of RM100,000, which was contributed equally by Sim Chin Hu ('Sim') and Kerk Han Meng ('Kerk'). According to Sim: (i) it was the arrangement between him and Kerk that they would operate the business of CJP as equal partners and both would be involved in its management and share responsibilities and benefits equally. However, in breach of the arrangement and underlying understanding above, Sim was terminated as general

manager; (ii) at that time, Sim and Kerk were the only directors. Kerk had convened a general meeting to appoint Lee Yu Meng ('Lee') as a director. Lee had earlier acquired 1.5% of each of Sim and Kerk's shares, amounting to 600,000 shares. The motion to appoint Lee was carried out as Kerk and Lee together held majority shareholding in CJP; (iii) Sim was removed as a director of CJP and he ceased to receive payment of director fees and all other benefits. Sim was deceived by Kerk, Lee and one Kuan Chin Wee ('Eric') because he allegedly incurred losses for the company; and (iv) Kerk and Eric were in the loop with regard to the Savino transactions but deflected the blame solely to Sim. The primary purpose of the transfer was to break the shareholder deadlock and remove Sim from management and force him to surrender his shares in CJP at no value or at an undervalue. However, Sim was told that Eric needed Lee as his nominee director on the Board to monitor developments in the company and that was why Sim and Kerk had to transfer 1.5% each of their shares to Lee. Lee became a director after the 3% equity was transferred to her. Sim then filed a minority oppression action at the High Court. At the conclusion of the trial, the High Court ordered/declared that, *inter alia*, (i) the affairs were conducted in a manner oppressive and/or in disregard of Sim's interest or otherwise prejudicial to him; (ii) Sim to sell his stake to CJP, or other respondents, with the fair value to be determined by an independent valuer without minority discount; (iii) Sim was to be removed as a signatory in the bank accounts of CJP and as guarantor of CJP for loans or trade facilities; (iv) the RM3.5 million advanced by Sim to CJP to be repaid with interests; (v) arrears of director's fees of RM6,000 per month be paid to Sim with interest; and (vi) Kerk and Lee to cause CJP to pay RM6,749,334 to Sim. Hence, the present appeals by (i) Lee against the decision of the High Court ('Appeal 2148'); and (ii) CJP against (a) the order to buy out Sim's shares ('Appeal 2146'); and (b) the dismissal of CJP's application to make representations and conduct cross examination in respect of the Deloitte final report which was prepared to facilitate the buyout order ('Appeal 1631'). Sim cross appealed in Appeals 2146 and 2148 to vary the reliefs granted to him, particularly in respect of the 1.5% shares of CJP he had transferred to Lee; Sim appealed for the 1.5% shares to be included in his stake for the purpose of the buyout order. The issues that arose for determination were: (i) whether there was a quasi-partnership between Sim and Kerk; (ii) whether the quasi-partnership ceased to exist when Lee became the 3% shareholder or when Eric bought one-third stake in it; (iii) whether the removal of Sim from the management was oppressive; (iv) the claim of Sim, for the sum of RM6,749,334, that represented his share of the payment by Eric for his one stake in CJP; (v) whether the order for CJP to pay RM3.5 million to Sim was correct; (vi) whether the buyout order was erroneous; (vii) whether the cross-appeal should be a subject of full appeal; (viii) whether there was any merit in Sim's cross appeal; and (x) the right of CJP to make representation on the Deloitte report and conduct cross-examination on the same.

Held (dismissing Appeals 2146, 2148 and 1631; allowing cross-appeals) Per Ravinthran Paramaguru JCA delivering the judgment of the court:

(1) There was overwhelming evidence that Sim and Kerk had, from the outset, decided to operate CJP on the basis of mutual trust and confidence between them. They conceived CJP as an equal partnership between them, operating outside the framework of the formal rules that govern relationships between shareholders in a company. The distinction between their roles as shareholders and directors was also blurred as they made decisions *qua* shareholders. Formal Board meetings were not held and decisions were made informally. (para 33)

(2) Sim had a legitimate expectation to participate in the management of CJP and would continue to do so as long as he remained a shareholder. A transfer of only 3% shares to Lee, who acted as trustee for Eric, could not have terminated the quasi-partnership in question. There was also no evidence to contradict Sim's assertion that he continued to participate in the management of CJP as before until his removal. (paras 39 & 44)

(3) The oppression action of Sim was based on s. 346 of the Companies Act 2016. Sim was (i) completely excluded from the management of CJP and was voted out as a director. His employment as the general manager was also terminated and, therefore, he did not receive director fees or salary as the general manager; (ii) excluded from the associated perks and his shares remained locked in the company without any possibility of deriving any benefits from them; and (iii) ordered to return the luxury vehicles allotted to him as a founding shareholder with the threat of police enforcement action being visited upon him. There was no offer to buy out his shares by Kerk or Eric. By being locked in as shareholder, without any possibility of deriving benefits by way of dividends or perks, as part of management or being a member of the Board, Sim suffered losses as a shareholder which Kerk and Lee did not. Thus, Sim was unfairly singled out to suffer this prejudice. Oppression, within the meaning of s. 346, had been proven by Sim. (paras 45, 47, 50 & 52)

(4) CJP argued that there was no evidence that Eric had paid the cumulative sum of RM6,749,334 into the company for the benefit of Sim. However, CJP failed to produce any documents to support its defence with respect to this claim. On the other hand, there was evidence of payment through a convoluted method. There was no reason to disturb the decision of the High Court ordering CJP to pay Sim the said sum. (para 58)

(5) Sim claimed that he had advanced RM3.5 million to CJP because of the financial difficulty the latter faced because of the Savino transactions. The respondents argued that he was compensating CJP for the RM16 million losses it suffered in the Savino transactions affair. There was no merit in this ground of appeal. The defendants did not produce any

document that stated that the payment of the money by Sim was a compensation; nothing in the accounts of the company, or any other contemporaneous documents, indicated that it constituted compensation paid by Sim. (paras 60 & 61)

(6) The buyout order made by the HCJ was justified and fair as Sim's shares were locked in the company without him deriving any benefit from it. However, the decision of the High Court was varied by removing CJP from the buyout order. The main prayer in the oppression action was for the remaining shareholders to buy out Sim; only the alternative prayer was for CJP to buy out the shares of Sim. The buyout order was also varied by ordering the remaining shareholders, *ie*, Kerk, Eric and Lee to buy out Sim in proportion to their respective shareholdings in CJP. (paras 62 & 63)

(7) The cross-appeals had merit. The company had 20 million shares and one-third would be 6,666,666 shares. Sim and Kerk had agreed to divest one-third equity to Eric. Nonetheless, a ruse was employed to procure 1.5% shares early on from Sim, which was transferred to Lee, who agreed that it was held in trust for Eric. In the premises, the 1.5% shares transferred to Lee should constitute part of the one-third equity sold to Eric. The High Court referred to the buyout of one-third shareholding held by Sim. Therefore, the 20 million shares should be divided three ways without first deducting 1.5% from it. Sim's buyout stake should be 6,666,666 shares instead of 6,466,666 shares as ordered by the High Court. (paras 66 & 67)

(8) The High Court dismissed CJP's application, to make representations and conduct cross-examination in respect of the Deloitte final report, as the buyout order clearly said that the fair value would be determined by the independent valuer and not the court. The consent order, where the report could be challenged, did not alter the original buyout order that stated that the fair value would be determined by the independent valuer. Therefore, making representation and cross-examining the valuer would serve no purpose. (para 72)

Case(s) referred to:

Chuah Seong Keat & Ors v. Din Tan Yong Chia & Ors [2022] CLJU 499; [2022] 1 LNS 499 HC ***(dist)***

Ebrahimi v. Westbourne Galleries Ltd [1973] AC 360 ***(refd)***

Ng Yong Long v. Qua Hock Leong & Ors [2006] CLJU 195; [2006] 1 LNS 195 HC ***(refd)***

Pan-Pacific Construction Holdings Sdn Bhd v. Ngiu-Kee Corporation (M) Bhd & Anor [2010] 6 CLJ 721 FC ***(refd)***

Re A Company [1987] BCLC 94 ***(refd)***

Re Kong Thai Sawmill (Miri) Sdn Bhd; Kong Thai Sawmill (Miri) Sdn Bhd & Ors v. Ling Beng Sung [1978] CLJU 170; [1978] 1 LNS 170 ***(refd)***

Legislation referred to:
Companies Act 1965, s. 181
Companies Act 2016, s. 346
Rules of the Court of Appeal 1994, r. 8

(Civil Appeal No: W-02(NCC)(A)-2146-11-2022)
For the appellant - K Kirubakaran, John Wong Yok Hon & Chong Kah Yee; M/s Shui-Tai
For the 1st respondents - Brendan Siva & Aida Haryani Salamon; M/s Brendan Siva
For the 2nd respondent - J Shamesh & Raymond Tan; M/s Jeevapartnership
For the 3rd respondent - Alvin Tang Wye Keet, Ponnie Govindasam & Kang Zhen Leong; M/s Alvin Tang Law Office
For the 4th respondent - Goh Zhi En, Siew Choon Jern & Ong Chern Yii; M/s Mah-Kamariyah & Philip Koh

(Civil Appeal No: W-02(NCC)(A)-2148-11-2022)
For the 1st appellant - J Shamesh & Raymond Tan; M/s Jeeva Partnership
For the 2nd appellant - Alvin Tang Wye Keet, Ponnie Govindasamy & Kang Zhen Leong; M/s Alvin Tang Law Office
For the 1st respondent - Brendan Siva & Aida Haryani Salamon; M/s Brendan Siva
For the 2nd respondent - Goh Zhi En, Siew Choon Jern & Ong Chern Yii; M/s Mah-Kamariyah & Philip Koh
For the 3rd respondent - K Kirubakaran, John Wong Yok Hon & Chong Kah yee; M/s Shui Tai

(Civil Appeal No: W-02((IM)(NCC)-1631-09-2024)
For the appellant - K Kirubakaran, John Wong Yok Hon & Chong Kah Yee; M/s Shui Tai
For the 1st respondent - J Shamesh & Raymond Tan; M/s Jeeva Partnership
For the 2nd respondent - Alvin Tan Wye Keet, Ponnie Govindasamy & Kang Zhen Leong; M/s Alvin Tang Law Office
For the 3rd respondent - Goh Zhi En, Siew Choon Jern & Ong Chern Yii; M/s Douglas Yee
For the 4th respondent - Brendan Siva & Aida Haryani Salamon; M/s Brendan Siva

[Editor's note: For the High Court judgment, please see Sim Chin Hu v. Kerk Han Meng & Ors [2023] CLJU 448; [2023] 1 LNS 448 (affirmed).]

Reported by Najib Tamby

JUDGMENT

Ravinthran Paramaguru JCA:

Introduction

[1] There are three appeals before us. All the appeals arise from a minority oppression action filed by Sim Chu Hu (Sim). The main issue in the High Court was whether his removal from the management of the company that he co-founded constituted oppression notwithstanding the fact that there was a pending claim by the company against him for breach of

fiduciary duty. The second issue was whether the quasi partnership arrangement between Sim and his co-founder (Kerk Han Meng) terminated upon the admission of new shareholders. Sim was successful in the court below.

[2] In Appeal 2146, CJ Polymers Sdn Bhd (CJ Polymer), the company that was co-founded by Sim, is the appellant. It was the fourth defendant in the High Court. An order was made for the company to return some moveable properties to Sim. The prayer for CJ Polymer to buy out Sim's shares was the alternative prayer in the oppression action. CJ Polymer was also ordered to buyout the shares of Sim by the High Court because prior to the hearing, it had made the buyout offer subject to set-off from losses suffered by it due to the alleged misconduct of Sim. The separate suit of CJ Polymer (Civil Suit WA-22NCC-298/072020) against Sim for alleged breach of fiduciary duty and misconduct was then pending in another court. CJ Polymer is appealing against the order to buyout the shares of Sim.

[3] In Appeal 2148, Kerk Han Meng (Kerk) and Lee Yu Meng (Lee) are the appellants. Kerk holds 48.5 per cent of the shares whereas Lee holds three per cent of the shares in CJ Polymer. They were the first and second defendants in the High Court. But on 7 May 2024, Kerk withdrew himself from this appeal insofar as it is related to him. Lee continued with her appeal against the decision of the High Court.

[4] In Appeal 1631, the appellant is CJ Polymer. The appeal is against the dismissal of the application of CJ Polymer on 13 September 2024 to make representations and conduct cross-examination in respect of the Deloitte final report. The Deloitte Report was prepared pursuant to the orders of the High Court dated 9th November 2022, 12 January 2023 and 8 November 2023 which were to facilitate the buyout order.

[5] The third defendant in the High Court was Eric Kua Chin Wee (Eric Kua). He is not a director of CJ Polymer. But a finding of fact was made by the High Court that he purchased one-third stake in the company from Sim and Kerk. He discontinued his own appeal (Appeal 2147) on 3 May 2024 and his counsel did not file any submissions. Nonetheless, he remains a respondent in the other appeals.

[6] Sim has filed a notice of cross appeal in Appeals 2146 and 2148 to vary the reliefs granted to him particularly in respect of the 1.5 per cent shares of CJ Polymer he had transferred to Lee Yu Meng (Lee). He is appealing for the 1.5 per cent shares to be included in his stake for the purpose of the buyout order.

[7] Pursuant to an order made on 31 January 2023, Appeal 2146 was consolidated with Appeal 2147 and Appeal 2148. However, as said earlier, Appeal 2147 was later withdrawn. Where the context requires, CJ Polymer, Kerk, Lee and Eric Kua are collectively referred to as the defendants. Otherwise, they are referred to individually by name.

A **Background Facts**

[8] The basic background facts are gratefully extracted from the judgment of the High Court. Sim and Kerk had been working in a Malaysian incorporated Taiwanese company called Hualon Corporation (M) Sdn Bhd since 1995. The company manufactured polyester resin and textile products.
B Sometime in the year 2001, Sim and Kerk, whilst still working for the said Taiwanese company decided to start their own trading company to export and import polymer and textile products. They had both gained substantial knowledge and expertise about polymer and textile products after working in the Taiwanese company for more than ten years. Along the way, they had
C also developed a network of suppliers, buyers and agents in the said industry.

[9] Consequently, CJ Polymer was incorporated with a paid-up capital of RM100,000 which was contributed equally by Sim and Kerk. Since they remained employed at Hualon, their wives were made the initial shareholders and directors, despite lacking relevant industry experience. The
D *de facto* managers were Sim and Kerk.

[10] Sim's evidence was that the arrangement between him and Kerk was they would operate the business of CJ Polymer as equal partners, and both would be involved in its management. Sim said that during the period 2001
E to 2008, he handled the chemical and plastics related business whereas Kerk dealt with the textile related products for the export market. It is common ground that CJ Polymer prospered and became a profitable enterprise since its incorporation. In the 20-year period between 2001 and 2020, the profits grew from RM190,000 to RM5.67 million a year.

F **[11]** According to Sim, he and Kerk were involved in the management of CJ Polymer as equal partners right from the start until his removal in December of 2019. Both Sim and Kerk executed personal guarantees for bank loans taken for the business of the company. CJ Polymer never declared dividends during the period 2001 to 2020. The arrangement between the
G parties was that they would derive benefits from being shareholders by drawing salaries, director fees, allowances and perks to themselves and their family members some of whom were employed by the company only on paper. Thus, both responsibilities and benefits were shared equally.

Complaint Of Sim

H **[12]** Sim's complaint in the oppression action is this. In breach of the underlying understanding that he was to have equal participation in the management of the company and its profits, he was terminated as general manager since 24 December 2019 and his day-to-day involvement in the company ceased. At that time, Sim and Kerk were the only directors.
I Subsequently, Kerk convened a general meeting to appoint Lee as a director. Lee had earlier acquired 1.5 per cent of Sim's shares and 1.5 per cent of

Kerk's shares which amounted to 600,000 shares. The motion to appoint Lee was carried as Kerk and Lee together held majority shareholding in CJ Polymer. In June of 2020, Sim was removed as a director of CJ Polymer. Thereafter, Sim was completely out of the picture and side-lined insofar as the management of CJ Polymer was concerned. The EGM to remove Sim was convened only after he requested records and documents pursuant to his right as a director. Thereafter, CJ Polymer ceased payment of director fees and all other benefits to Sim. He was also asked to return various vehicles to CJ Polymer which were part of his perks as founding director and shareholder.

[13] Sim testified that he was deceived by Kerk, Lee and Eric Kua into relinquishing 1.5 per cent of his shares to Lee because he (Sim) allegedly incurred losses for the company through the so-called Savino Transactions which we will elaborate later. Sim said that Kerk and Eric Kua were in the loop with regards to the said Savino Transactions but deflected the blame solely to him only. He said that the real purpose of the transfer was to break the shareholder deadlock and remove him from management and force him to surrender his shares in CJ Polymer at no value or at an undervalue. However, Sim was told that Eric Kua needed Lee as his nominee director on the board to monitor developments in the company. That is why Sim and Kerk had to transfer 1.5 per cent each of their shares to Lee. She became a director two months after the three per cent equity was transferred to her.

The Defence

[14] The defendants denied that they caused any unfair prejudice or oppression to Sim. They also denied the existence of a quasi-partnership between Sim and Kerk. If there was, it terminated upon the admission of a new shareholder. The existence of a quasi-partnership is not permanent and legitimate expectation can shift. The case of *Chuah Seong Keat & Ors v. Din Tan Yong Chia & Ors* [2022] CLJU 499; [2022] 1 LNS 499; [2022] MLJU 455 where a quasi-partnership that existed at the inception was found to have ceased at a later date was cited in support. In addition, Kerk and CJ Polymer alleged misconduct on the part of Sim in managing the affairs of the company as part of their defence.

[15] The misconduct against Sim may be summarised as follows. The first group of allegations pertained to the action of a former sales manager of CJ Polymer who incorporated his own company known as May Polymer Sdn Bhd. That company conducted the same business as CJ Polymer. Sim was alleged to have acted in concert with the said former sales manager to divert business away from CJ Polymer. He was alleged to have placed an order from one of CJ Polymer's suppliers for the benefit of May Polymer Sdn Bhd. He was also alleged to have assisted the former sales manager (Ma Yew Seng) to breach the non-solicitation and non-dealing prohibition clause of his employment contract.

[16] The second group of allegations of misconduct pertained to the so-called Savino Transactions handled by Sim which resulted in a loss of RM16 million for CJ Polymer. It arose in this way. Sim had sales dealings with two South African companies known as Solomon David Group (Pty) Ltd (SDG) and Savino Del Bene (Pty) Ltd (Savino). CJ Polymer supplied goods in 64 transactions. It was alleged that Sim misled the defendants into believing that Savino was the buyer when the actual buyer was SDG. Payments totalling RM16 million were not received by CJ Polymer for 21 transactions. Sim was blamed for the loss. It is also alleged that Sim did not make any claims from the Atradius Insurance Company who is the trade credit insurer of CJ Polymer because the claims were fraudulent or fictitious.

[17] In respect of the Savino Transactions, CJ Polymer commissioned an independent forensic accountant, Messrs Ferrier Hodgson M H Sdn Bhd (FHMH) to undertake an independent audit on the company. The report was given on 30 June 2020.

[18] Subsequently, on 13 July 2020, CJ Polymer sued Sim in the Kuala Lumpur High Court for breach of fiduciary and breach of his duty of fidelity as general manager and for fraud. The allegations of misconduct against Sim were followed by the argument that his removal from management was justified, even if he was a quasi-partner of CJ Polymer. As a result, his legitimate expectation to participate in the management had come to an end.

[19] The second reason put forth by the defendants to support the case that the quasi-partnership arrangement, if it existed, had ceased is this. In the submissions, the defendants took the position that Eric Kua had been admitted as a one-third shareholder of CJ Polymer. The High Court observed that this position was taken in the submissions of their counsel although both Kerk and Eric Kua denied in their evidence that the sale of the one-third shares was concluded.

Findings And Decision Of The High Court

[20] The proceedings in the High Court were conducted by way of affidavits and cross-examination of Sim, Kerk, Lee and Eric Kua on their affidavits. The learned High Court Judge made a finding of fact that a quasi-partnership existed between Sim and Kerk. Therefore, it would be inequitable for Kerk to insist on strict legal rights to bar Sim from participating in the management of company. His Lordship arrived at this conclusion after considering the following facts. Sim and Kerk were colleagues and had worked together for ten years when they planned to incorporate CJ Polymer. They started as equal shareholders and their roles as shareholder and director were blurred in the decision-making process. There were no appointment letters, contracts nor board resolutions with respect to the role of Kerk as managing director or the role of Sim as general manager. There was an express policy in place for Sim and Kerk to enjoy

equal remuneration, benefits and cash rewards from the profits of CJ Polymer. Consequently, no dividends were declared. Instead, cash payments were disguised as salaries to non-working family members, reimbursements for personal expenses, family travel claims and gifts to relatives. Major decisions at CJ Polymer were made informally by Sim and Kerk, without a single physical board meeting ever being held.

[21] Having made a finding that Sim and Kerk are quasi-partners, the learned High Court Judge considered the issue raised by counsel for Kerk and Eric Kua that the latter's purchase of one-third shares had the effect of terminating the said quasi-partnership. Eric Kua was, and still is, an employee of a subsidiary of Petronas Corporation. His company supplied material to CJ Polymer for a long time and therefore he was well acquainted with Sim and Kerk. Having considered the evidence, the High Court found that Sim and Kerk had concluded an agreement for Eric Kua to buy one-third of the shares of CJ Polymer for RM15 million. However, the learned High Court Judge found that the quasi-partnership between Sim and Kerk survived the introduction of Eric Kua as a shareholder.

[22] His Lordship's reasons are as follows. Eric Kua, at all material times, remained an employee of a Petronas subsidiary. Although there is evidence that he was familiar with the business of CJ Polymer and had given instructions to its staff, he never participated in the decision-making process. Most importantly, he deliberately stayed out of the management of CJ Polymer, as involvement would have placed him in a position of conflict of interest.

[23] With respect to the alleged misconduct by Sim in the management of CJ Polymer, the learned High Court Judge noted that it is the subject matter of a separate suit. The suit was filed by CJ Polymer three months after the instant oppression action was filed by Sim. Counsel for Sim told this court during oral argument that the said suit was dismissed in August of this year, *ie*, well after the instant decision was delivered by the High Court. Nonetheless, all the relevant evidence with respect to the alleged wrongdoing of Sim was not before the court in the instant oppression action. For that reason, the learned High Court Judge held that the issue did not require determination in the instant oppression matter. He concluded that the allegations against Sim remained unproven.

[24] The final crucial issue considered by the learned High Court Judge was whether the affairs of CJ Polymer and the powers of the directors were conducted or exercised in a manner oppressive to Sim and or in disregard of his interests as a shareholder. His Lordship answered this question in the affirmative for the following reasons.

[25] Sim was excluded from management although he was a quasi-partner without any offer to buy his shares at fair value. Thus, his asset remained locked in the company. The offer to buy out came from CJ Polymer after the instant action was filed but it was subject to the condition that Sim agrees for the purchase price to be set aside in a separate account until CJ Polymer's suit is decided. His Lordship found this unreasonable.

[26] With regard to the sharing of CJ Polymer's profits by Kerk and Sim, the High Court observed that dividends were never declared. Instead, as partners, Sim and Kerk enjoyed benefits through salaries, directors' fees, and perks for themselves and their families. It was also their established practice to draw roughly equal benefits. However, all the perks previously enjoyed by Sim ceased when he was removed as General Manager. For instance, he was asked to return six company cars that had been allotted to him, while Kerk had been allotted five. These vehicles were not provided to Sim by virtue of his employment as general manager, but in his capacity as a shareholder and director. Nevertheless, Sim was informed that a police report had been lodged against him for failing to return the cars. In fact, a police officer told him he was under investigation for that reason. On one occasion, unidentified individuals even came to his house at night to demand the return of the vehicles. Additionally, his directors' fees were withheld between December 2019 and June 2020. The High Court found that the unilateral withdrawal of all his privileges following his exclusion from management was oppressive and disregarded his interests as a shareholder and member of CJ Polymer.

[27] In his claim, Sim also asked for refund of RM3.5 million from CJ Polymer. His case was that this sum of money constituted an advance from him to the company as it was facing financial losses. However, it was the defendants' case that Sim was obliged to compensate CJ Polymer for the losses it suffered in the Savino Transactions. The High Court Judge made a finding of fact that it was an advance as there was no evidence that Sim had agreed to pay compensation for the Savino Transaction losses and ordered CJ Polymer to refund it. Furthermore, the RM3.5 million was not accounted for in the RM16 to 17 million that CJ Polymer is claiming against Sim in its then pending suit against Sim.

[28] Sim also claimed his share of the RM15 million that Eric Kua paid for the purchase of a one-third share in CJ Polymer. The payment of the RM15 million to Sim and Kerk was made in what the learned High Court Judge described as a "convoluted" manner, involving numerous transactions, including some through CJ Polymer. The judge found that a sum of RM6,749,334 remained owing to Sim by Eric Kua, and that this amount was held by CJ Polymer. His Lordship accordingly ordered CJ Polymer to pay the said sum to Sim.

[29] The final relief the High Court granted Sim was a buyout order. After taking into account the purchase of shares by Eric Kua, he found that Sim held 33 per cent of the shares of CJ Polymer. He ordered Kerk, Lee and Eric Kua to buyout Sim's shares on a joint and several bases in proportion to their respective shareholdings or such other proportions as agreed among themselves. His Lordship also gave CJ Polymer the option to purchase Sim's shares as it made such an offer earlier. As there was no agreement on the value of the shares, His Lordship ordered that it be determined by an independent valuer to be appointed by the court from a list of firms nominated by the parties.

[30] It must be noted in paras. [159] and [161] of his judgment, the learned High Court Judge found that the transfer of 1.5 per cent or 300,000 shares from Sim to Lee was unnecessary as a director need not hold shares in the company. His Lordship believed Sim's claim that the real purpose was to break the 50:50 deadlock in the votes. However, when ordering buyout, His Lordship did not include the 300,000 shares as part of the original half share stake of Sim. Therefore, when the entire shareholding of 20 million shares is divided by three between Sim, Kerk and Eric Kua, Sim's share should be 6,666,666 shares instead of 6,466,666 shares as ordered by the High Court. The cross appeal of Sim in Appeals 2146 and 2148 is to vary the same.

[31] In summary, the orders and reliefs the High Court granted are as follows:

(i) a declaration that the affairs of CJ Polymer were conducted in a manner oppressive and or in disregard of Sim's interest or otherwise prejudicial to him;

(ii) Sim do sell his stake to CJ Polymer or other defendants with the fair value to be determined by an independent valuer without minority discount;

(iii) Sim to be removed as signatory in the bank accounts of CJ Polymer;

(iv) Sim be removed as guarantor of CJ Polymer for loans or trade facilities;

(v) a declaration the benefits granted to Sim referred to letters dated 14 November 2019, 11 December 2019 and 24 December 2019 cannot be unilaterally withdrawn;

(vi) the RM3.5 million advanced by Sim to CJ Polymer be repaid with interests at 5 per cent per annum;

(vii) arrears of director's fees of RM6,000 per month between December 2019 and June 2020 be paid to Sim with interest of 5 per cent per annum; and

(viii) Kerk and Lee do cause CJ Polymer to pay RM6,749,334 to Sim with interest of 5 per cent per annum.

A **Issues In The appeals**

[32] Kerk, the co-founder of CJ Polymer, and Eric Kua, the purchaser of one-third stake in it are no longer prosecuting their appeals against the decision of the High Court. Only Lee, who holds three per cent stake in CJ Polymer and the company itself are challenging the decision of the High
B Court. The other appeals that remain are the cross appeals of Sim with respect to the 1.5 per cent of his shareholding that was acquired by Lee. The main issues argued before us in remaining appeals are as follows:

(i) whether a quasi-partnership existed between Sim and Kerk;

C (ii) whether it ceased to exist when Lee became three per cent shareholder or when Eric Kua bought one-third stake in it;

(iii) whether removal of Sim from management was oppressive;

(iv) whether alleged misconduct of Sim relevant;

D (v) the claim of Sim for the sum of RM6,749,334 that represented his share of the payment by Eric Kua for his one stake in CJ Polymer;

(vi) whether order for CJ Polymer to pay RM3.5 million to Sim is correct;

(vii) whether buyout order was erroneous;

E (viii) whether cross appeal should be a subject of full appeal;

(ix) whether any merit in cross appeal of Sim; and

(x) right of CJ Polymer to make representation on the Deloitte Report and conduct cross examination on it.

F **Quasi-partnership**

[33] Sim pleaded that CJ Polymer is a quasi-partnership between Kerk and him. The High Court made a finding of fact that such a quasi-partnership existed after considering the well-known cases of *Ebrahimi v. Westbourne*
G *Galleries Ltd* [1973] AC 360 and *Re A Company* [1987] BCLC 94. We are of the view, that the learned High Court Judge correctly made this finding based on the overwhelming evidence that Sim and Kerk had, from the outset, decided to operate CJ Polymer on basis of personal mutual trust and confidence between them. They conceived CJ Polymer as an equal
H partnership between them, operating outside the framework of the formal rules that govern relationships between shareholders in a company (see. The distinction between their roles as shareholder and directors was also blurred, as they made decisions *qua* shareholders. Formal board meetings were not held, and decisions were made informally.

I **[34]** We have summarised the reasons of the High Court earlier and now briefly revisit them. It is indisputable that Sim and Kerk were long-time colleagues at another company and jointly conceived the idea of incorporating CJ Polymer. At the early stages, neither Kerk nor Sim

formally became directors or took part in the management of CJ Polymer, as they were still working with their former employer. Such was the level of trust between them that they operated CJ Polymer through their respective wives.

[35] Although Kerk was the managing director, there was no letter of appointment or board resolution formalising his role. Similarly, while a letter was issued regarding Sim's appointment as general manager, there was no board resolution authorising it. The learned High Court Judge found that Kerk had admitted both of them had rooms at CJ Polymer's premises from the beginning, even while still employed at Hualon Corporation. Their authority in CJ Polymer stemmed from their equal ownership, much like an unincorporated partnership.

[36] With regard to their shareholding in CJ Polymer, they did not consider it necessary to enter into a formal shareholders' agreement. When they later incorporated other companies, namely, CJ Polymers PLC in Labuan, Artimis International Ltd in Hong Kong, and Newroads Management Ltd, they again held equal shareholdings and did not draw up shareholder agreements. They also never held physical board meetings to make decisions.

[37] When the company prospered, they never declared dividends. Kerk confirmed this fact under cross-examination. Even when the profits of the company grew from RM190,000 in 2001 to RM5.67 million in 2020, no dividends were declared. As equal partners in complete control of the company, they enjoyed benefits in the manner described by the High Court, *ie*, through salaries to themselves and various perks extended to themselves and their family members, including fictitious employment of the latter. Kerk agreed during cross-examination that these perks increased correspondingly with the profits of the company. The learned High Court Judge also noted that Kerk agreed that in 2014, the total salaries paid to him and his wife nearly equalled those paid to Sim and his ex-wife.

[38] The company vehicles allocated to Kerk and Sim were roughly equal in number, and there was no credible denial by Kerk regarding this evidence. The learned High Court Judge noted that Kerk, during cross-examination, stated he had never insisted on altering the shareholding structure from the original 50:50 arrangement until 2019. Accordingly, the High Court had ample evidence to conclude that Kerk and Sim had an understanding or arrangement whereby they would not benefit from the company's profits in the conventional manner, *ie*, through dividends but instead through salaries and perks. All the above evidence supports the inference that Kerk and Sim operated CJ Polymer based on mutual trust and confidence reposed in each other, outside the formal rules that typically govern relationships between shareholders.

[39] As counsel for Sim submitted, Kerk is no longer pursuing his appeal against the decision of the High Court. The existence of a quasi-partnership must necessarily be within the personal knowledge of the parties involved, namely, Sim and Kerk. It cannot be within the knowledge of Lee who entered the picture as a three per cent shareholder, purportedly to look after the interest of Eric Kua when tensions arose between the original partners. Thus, there is abundant evidence of the existence of quasi-partnership with respect to the affairs of CJ Polymer from the moment of incorporation up to the point of dispute. Therefore, the conclusion of the High Court that Sim had a legitimate expectation to participate in the management of CJ Polymer and would continue to do so as long as he remained a shareholder is unassailable.

Whether Quasi-Partnership Ceased Up Admission Of New Shareholders

[40] In the High Court, counsel for Kerk argued that Sim admitted that both he and Kerk agreed to divest one-third shareholding in CJ Polymer to Eric Kua and that partial payment had been made. Eric Kua originally worked in Hualon Corporation where he became acquainted with Kerk and Sim. He later joined a subsidiary of Petronas Corporation. As an employee of Petronas, he had dealings with CJ Polymer. He also aspired to become a businessman. It was argued that the divestment of one-third equity to Eric Kua brought an end to the quasi-partnership, assuming such a partnership existed in the first place.

[41] The learned High Court Judge referred to the case of *Ng Yong Long v. Qua Hock Leong & Ors* [2006] CLJU 195; [2006] 1 LNS 195; [2006] 5 MLJ 768 and observed that the quasi- partnership character of a company may change due to intervening events or even by voluntary surrender of the status by a "quasi-partner" after incorporation. His Lordship also referred to his own judgment in *Chuah Seong Keat & Ors v. Din Tan Yong Chia & Ors* [2022] CLJU 499; [2022] 1 LNS 499; [2022] MLJU 455, where he said that shareholders are at liberty to change any arrangement with respect to the quasi-partnership nature of a company. However, we agree with the learned High Court Judge that the facts of the above-mentioned case can be easily distinguished. In that case, the share sale agreement, signed by all parties following the introduction of a new investor, expressly altered the previous understanding. Clause 10 of the share sale agreement specifically stipulated that any prior agreements, letters, or correspondence, whether oral or written, expressed or implied, were superseded.

[42] As we said earlier the High Court found that quasi-partnership character of CJ Polymer did not change for the following reason. His Lordship found on the evidence that it was agreed that Eric Kua would acquire one-third equity in CJ Polymer by end of 2017 or early 2018. However, there was no evidence to contradict Sim's assertion that the quasi-

partnership arrangement between him and Kerk would change. His Lordship found that the burden of proof on this point was on the defendants. His Lordship also considered the evidence that there was an understanding that Eric Kua would not participate in the management of the company as this would bring him into conflict with his duties and responsibilities as an employee of Petronas. In his capacity as an employee of Petronas, Eric Kua continued to deal with the fertiliser side of the business of CJ Polymer.

[43] We find no error in the reasoning of the High Court on this point. It is clear that Eric Kua's investment in CJ Polymer by offering to purchase one- third stake could not have ended the quasi-partnership in 2017 or 2018 as Kerk and Sim continued to operate CJ Polymer as before. The shares intended for Eric Kua were not even transferred to him. Eric Kua continued to work with Petronas with the understanding he would not participate the management of CJ Polymer until he ceased working with his current employer. Therefore, as the High Court found, his participation as a shareholder was more of an investor. In the premises, the admission of Eric Kua as a shareholder could not have ended the quasi-partnership as of 2019 when the dispute in question arose.

[44] It was pointed out to us on behalf of CJ Polymer that the learned High Court Judge only considered the admission of Eric Kua as a shareholder but did not consider the three per cent shares (1.5 per cent each from Kerk and Sim) that were transferred to Lee. The argument is that it had the effect of ending the quasi-partnership. Although, the learned High Court Judge did not directly mention the acquisition of three per cent shares by Lee, in our view, there is no error in His Lordship's finding of fact that the quasi-partnership survived. It must be recalled that the three per cent equity given to Lee is connected to the one-third equity acquired by Eric Kua. It was Kerk and Eric Kua who represented to Sim after the so-called Savino Transactions affair that Eric Kua would want somebody to represent him on the board of directors. Lee herself wrote a letter to the effect that she was a trustee of Eric Kua. The learned High Court Judge noted that the entry of Eric Kua as an investor with one-third equity did not terminate the quasi-partnership understanding between Kerk and Sim for reasons discussed earlier. It stands to reason that a transfer of only three per cent shares to Lee who acted as trustee for Eric Kua could not have terminated quasi-partnership in question. Furthermore, as noted by the learned High Court Judge, there was no evidence to contradict the assertion of Sim that he continued to participate in the management of CJ Polymer as before until he was removed at the end of 2019.

Oppression

[45] The oppression action of Sim is based on s. 346 of the Companies Act 2016. In evaluating the case of Sim, the learned High Court Judge was guided by the following eminent authorities that considered the predecessors in the

repealed Companies Act 1965, namely s. 181. In summary, s. 346 states that a shareholder may apply for relief under it on the ground that the affairs of the company are being conducted or the powers of the directors are exercised in a manner oppressive or in disregard of his interest or some act of the company unfairly discriminates against him.

[46] In the seminal case of *Re Kong Thai Sawmill (Miri) Sdn Bhd; Kong Thai Sawmill (Miri) Sdn Bhd & Ors v. Ling Beng Sung* [1978] CLJU 170; [1978] 1 LNS 170; [1978] 2 MLJ 227, the Privy Council said that before a case of oppression is made out, there must be visible departure from the standards of fair dealing. The "disregard" in the section involves something more than a failure to take into account of the minority's interest. There must be an awareness of that interest and an evident decision to override it or ignore the proper company procedure. In the case of *Pan-Pacific Construction Holdings Sdn Bhd v. Ngiu-Kee Corporation (M) Bhd & Anor* [2010] 6 CLJ 721, the Federal Court emphasised that the basic theme of s. 181 is "unfairness" in that "disregard of interests" is to be understood to mean "unfair disregard" while "oppression" denotes an "unfairly prejudicial conduct" which means conduct "departing from standards of fair play and a violation of conditions of fair play".

[47] As we said earlier, in our view, the learned High Court Judge correctly found on the evidence that CJ Polymer was run as a quasi-partnership between Kerk and Sim from the outset and the said partnership survived the admission of Lee as a three per cent shareholder and the purchase of one-third equity by Eric Kua. However, in 2019, Sim was completely excluded from management of CJ Polymer in breach of his legitimate expectation to do so as a quasi-partner for almost 20 years. He was voted out as a director as Kerk and Lee together held 51.5 per cent of the shares. His employment as general manager was also terminated. Therefore, he did not receive director fees or salary as general manager. The evidence before High Court was that it was the practice of the company to declare dividends as Kerk and Sim as shareholders enjoyed the profits of the company through various perks including director fees and salaries for themselves and their family members.

[48] Lee gave evidence that the salary paid to Kerk and Sim were in their capacity as employees of the company. However, we are not minded to disturb the finding of fact by the High Court to the contrary. Both Kerk and Sim received hefty perks including high salaries for themselves and their wives which were almost equal. The inference that such perks were benefits *qua* shareholders is irresistible.

[49] Lee also told the court that bonus shares were allotted as distribution of profits and that the learned High Court Judge erred in holding that there was no distribution of profits because there was no issuance of dividends. However, as pointed out by counsel for Sim, this point was not raised in the

High Court and should not be permitted to be argued now. Anyway, we should think it is an insignificant point. The high salaries and various perks including holidays abroad and five or six luxuries cars to Kerk and Sim and their families when CJ Polymer became increasingly profitable only means that there was an understanding between the partners that in the main, they would enjoy benefits as shareholder in this manner and not through payment of dividends.

[50] However, Sim was excluded from management and the associated perks suddenly in 2019 and his shares remained locked in the company without any possibility of deriving any benefits from them. In fact, he was ordered to return the luxury vehicles allotted to him as a founding shareholder with the threat police enforcement action being visited upon him. There was no offer to buy out his shares by Kerk or Eric Kua. By being locked in as shareholder without any possibility of deriving benefits by way of dividends or perks as part of management or being member of the board, Sim had suffered loss as a shareholder which Kerk or Lee did not. Thus, Sim was unfairly singled out to suffer this prejudice.

[51] CJ Polymer only made a belated buyout offer after Sim filed the action, which the High Court found to be unreasonable. Furthermore, Sim was pressured to relinquish 1.5 percent of his shares to Lee under the pretext that Eric Kua needed someone on the board of directors as a "check and balance" to protect his interests following the Savino Transactions affair. The High Court found that one does not need to be a shareholder to become a director, and that the true purpose of this ruse was to force Sim to give up the 1.5 percent shareholding in order to break the shareholder deadlock and remove him from management.

[52] For the above reasons, we are of the view that the High Court correctly found that oppression within the meaning of s. 346 had been proved by Sim.

Alleged Misconduct Of Sim

[53] Kerk and CJ Polymer alleged misconduct on the part of Sim in managing the affairs of the company as part of their defence. We have referred to the details of the alleged misconduct of Sim and the alleged breach of his fiduciary duty owed to CJ Polymer. Sim was said to have acted in concert with a former sales manager of CJ Polymer to draw business away from the company and had also caused losses in the Savino Transactions affair. However, the allegations were not established and had been properly placed for determination in the suit of CJ Polymer against Sim which was then pending trial. In the premises, the High Court did not err in not considering the issue whether Sim had committed any misconduct. If Sim is found to have committed misconduct, they would be squaring of accounts in the suit of CJ Polymer against him. But as the High Court noted, all allegations against Sim remained unproven.

A **Claim Of Sim For The Sum Of RM6,749,334**

[54] The High Court allowed the above claim of Sim against CJ Polymer. The first point taken up by counsel for CJ Polymer is that this claim was not pleaded in the originating summons. The pleading issue was not raised by counsel for CJ Polymer in the memorandum of appeal. For this reason alone, we think it should not be permitted to be raised now.

[55] The second reason we would dismiss the argument of CJ Polymer's counsel is this. This claim was originally raised in the High Court writ action of CJ Polymer against Sim. The learned High Court Judge in the said writ action struck out the claim by consent of the parties to avoid multiplicity of proceedings and gave leave to Sim to file an additional affidavit in the oppression action to raise the claim pertaining to the sum of RM6,749,334. CJ Polymer's previous counsel did not see fit to object to it in this action on the ground that it was not pleaded when the matter came before the learned High Court Judge. Therefore, we see no merit in the pleading point.

[56] The above-mentioned claim of Sim represented his share of the payment by Eric Kua for his one-third stake in CJ Polymer. Initially, both Kerk and Eric Kua denied that the sale of one-third stake in CJ Polymer to the latter had taken place. However, the High Court found clear evidence of a concluded sale. Their counsel also conceded that a sale was concluded. The agreed sale price for one-third equity in CJ Polymer was RM15 million. Accordingly, Sim's share for relinquishing his one-third stake to Eric Kua was RM7.5 million. The High Court found that payment by Eric Kua was not made in a straightforward way but through a "convoluted" method. It involved payments through commissions, land purchase, crediting of bank accounts in Singapore and other transactions. This finding is addressed in para. 165 of the judgment of the High Court. After taking into account various set-offs, the learned High Court Judge found that a sum RM6,749,334 remained owing to Sim and that it was held by CJ Polymer. He ordered CJ Polymer to refund the amount to Sim.

[57] However, the argument of counsel for CJ Polymer is that these payments made by Eric Kua represented "director's advances" by both Sim and Kerk and they had already been repaid in the form of the company's shares that were allotted to them between 2016 and 2018 and that there were also cash payments. However, as noted by the learned High Court Judge, CJ Polymer did not adduce any documents to show the said allotment or the consideration paid for them and there is no evidence of cash payments either. As submitted by counsel for Sim, CJ Polymer ought to have produced the relevant documents since that would have been in its possession.

[58] Before us, counsel for CJ Polymer argued that there was no evidence that Eric Kua had paid the cumulative sum of RM6,749,334 into the company for the benefit of Sim. This is their primary contention. However, as we said earlier, the High Court was mindful that payment was not made

in a "straightforward" way but in a "convoluted" way. We find no error in the finding of fact by the High Court. CJ Polymer failed to produce any documents as stated by the High Court to support its defence with respect to this claim. On other hand, the High Court found evidence of payment through a "convoluted" method as asserted by Sim. In the premises, we see no reason to disturb the decision of the High Court ordering CJ Polymer to pay Sim the said sum.

Return Of Moveable Assets

[59] The High Court made a declaration that the items demanded by CJ Polymer in letters dated 14 November 2019, 11 December 2019 and 24 December 2019 as part of the benefits in kind granted to Sim as co-founder of the company cannot be withdrawn. The items include six vehicles given for the use of Sim when he was general manager. The High Court found that the items were given to Sim based on the understanding he was an equal partner and would derive benefits through such perks. As we have already affirmed the said finding of fact when dealing with the quasi-partnership issue, we see no reason to set aside the declaration granted by the High Court.

The RM3.5 Million Advance Owed To Sim

[60] Sim claimed that he had advanced RM3.5 million to CJ Polymer because of the financial difficulty it faced because of the Savino Transactions. However, at the High Court, it was the defendants' case that Sim was compensating CJ Polymer for the RM16 million losses it suffered in the Savino Transactions affair. The finding of the High Court was that the money constituted an advance by Sim to CJ Polymer which the latter was obliged to return. It did not constitute compensation for the role that Sim played in the Savino Transactions affair.

[61] Counsel for CJ Polymer and Lee argued that the High Court erred in finding that the sum of RM3.5 million was an advance by Sim and not compensation paid by him for the losses suffered by the company in the Savino Transactions affair. We find no merit in this ground of appeal. The defendants did not produce any document that states that the payment of the money by Sim was compensation. Nothing in the accounts of the company or any other contemporaneous documents indicates that it constituted compensation paid by Sim. Furthermore, in its suit against Sim in the writ action, CJ Polymer is claiming the entire purported losses of RM16 million to RM17 million in the Savino Transactions. Assuming that Sim paid the RM3.5 million as compensation, CJ Polymer would have logically accounted for it in the writ action by deducting it. It was also argued that CJ Polymer did not face any financial difficulty. However, as noted by the High Court, Sim referred to financial difficulty only in the context of losses that CJ Polymer suffered as a result of Savino Transactions. But Sim did not say

A that he was accepting blame and paying compensation. For the above reasons, the finding of the High Court that the RM3.5 million is an advance that CJ Polymer ought to return to Sim is sound.

Buyout Order

B **[62]** The learned High Court Judge made a buyout order. In our view the order is justified as Sim's shares are locked in the company without him deriving any benefits from it. As stated earlier, CJ Polymer started life as a quasi-partnership. Sim derived benefits from being part of the management. He has since been completely excluded from management and the board of C directors. In the premises, it would not be sensible for him to participate in the proposed rights issue and future rights issue as he would remain a minority shareholder without opportunity to share in the company's profits. His shareholding would also face dilution in a company he co-founded as a quasi-partner and director. In the premises, the buyout order is fair in our view.

D

[63] However, we shall vary the decision of the High Court by removing CJ Polymer from the buyout order granted by High Court. The main prayer in the oppression action is for the remaining shareholders to buyout Sim. The only alternative prayer is for CJ Polymer to buy out the shares of Sim. We E shall also vary the buy-out order of the High Court by ordering the remaining shareholders, Kerk, Eric Kua and Lee to buy-out Sim in proportion to their respective shareholdings in CJ Polymer.

Cross-appeals

[64] In the cross appeals, Sim is appealing for the 1.5 per cent shares to be F included in his stake for the purpose of the buyout order. The learned High Court did not grant Sim's prayer for the 1.5 per cent to be included in his stake in CJ Polymer for the purpose of buyout. It will be recalled that Sim transferred the 1.5 per cent to Lee when it was suggested that Eric Kua would want a representative on the board of directors as a "check and G balance".

[65] Before us, counsel for respondent raised a preliminary point that Sim cannot raise this issue by way of cross-appeal as it is not for the purpose of varying an order made but for seeking a relief that was not granted. In our view, there is no merit in the preliminary point as there is an appeal against H the buyout order of the stake of Sim. As the cross-appeals seek to vary the size of the stake, it comes within r. 8 of the Rules of the Court of Appeal 1994.

[66] We are of the view that the cross-appeals have merit. The learned High I Court Judge said that the transfer of the 1.5 per cent shares to Lee was procured through the ruse that she needs to sit on the board of directors. However, Sim willingly transferred his shares. Nonetheless, the High Court made a finding of fact that it was a ruse used by Kerk to break the deadlock and remove Sim.

[67] The company has 20 million shares, and one-third would be 6,666,666 shares. As we noted, Sim and Kerk had agreed to divest one-third equity to Eric Kua. Nonetheless, a ruse was employed as found by the learned High Court Judge to procure 1.5 per cent shares early on from Sim which was transferred to Lee who agreed that it was held in trust for Eric Kua. In the premises, the 1.5 per cent shares transferred to Lee should constitute part of the one-third equity sold to Eric Kua. The learned High Court Judge referred to the buyout of one-third shareholding held by Sim. Therefore, the 20 million shares should be divided three ways without first deducting 1.5 per cent from it. Therefore, Sim's buyout stake should be 6,666,666 shares instead of 6,466,666 shares as ordered by the High Court. Accordingly, we allow the said cross appeals.

Representation And Cross-examination On Deloitte Report

[68] One of the reliefs granted by the High Court when granting judgment in favour of Sim on 9 November 2022 was the buyout order that read as follows:

> 2. The plaintiff do sell all his 6,466,666 shares in the fourth defendant, and the fourth defendant and/or alternatively the 1st defendant and/or the second defendant and/or the third defendant do purchase and/or cause and procure the purchase of the same, at a fair value to be determined by an independent valuer appointed by the court without any minority discount. The costs of the valuation to be borne by the fourth defendant.

[69] A further order was by the court on 12 January 2023 to set out the procedure for the appointment of the independent valuer. In the said order, Lee and CJ Polymer are entitled to appoint their own professional advisers to make representation to the independent valuer and that upon determination by the independent valuer, CJ Polymer and or Kerk, Lee and Eric Kua are to make payment to Sim for his shares within three months.

[70] The High Court appointed Leonard Woo of Deloitte to be the independent valuer. He prepared a valuation report within three months. As parties were unable to agree to the terms of the appointment, they agreed to a revised letter of appointment, which states that "it is without prejudice to the right of the parties to challenge the findings in the Deloitte report"

[71] Before the three-month period to pay Sim expired, CJ Polymer filed enclosure 385 on 5 July 2024 to make representation and cross-examination of the Deloitte final report. The valuation for one-third stake was RM21 million. Lee supported the application. CJ Polymer contended that it has a right to challenge the Deloitte final report based on the consent order where the parties had expressly agreed to Deloitte's letter of appointment as revised "without prejudice to the right of the parties to challenge the findings in the Deloitte's report ...".

[72] The High Court dismissed the application as the buyout order clearly says that the fair value will be determined by the independent valuer and not the court. We agree with the High Court that the consent order whereby the report can be challenged does not alter the original buyout order that states that the fair value will be determined by the independent valuer. Therefore, we agree that making representation and cross examining the valuer would serve no purpose. We therefore dismiss Appeal 1631.

Conclusion

[73] In conclusion, the Appeal 2146 is dismissed and we order CJ Polymer to pay costs of RM50,000 to Sim Chin Hu. Appeal 2148 is dismissed and we order Lee Yu Meng to pay costs of RM50,000 to Sim Chin Hu. The cross appeals of Sim Chin Hu in Appeal 2146 and 2148 are allowed with no order as to costs. Appeal 1631 is dismissed and CJ Polymer and Lee Yu Meng are ordered to pay costs of RM20,000 each to Sim Chin Hu. All costs orders are subject to payment of allocator.